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information system that HUD designates for the HTF.

(b) *Repayments.* (1) Any HTF funds invested in housing that does not meet the affordability requirements for the period specified in § 93.302 or § 93.304, as applicable, must be repaid by the grantee in accordance with paragraph (b)(3) of this section.

(2) Any HTF funds invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by the grantee, in accordance with paragraph (b)(3) of this section.

(3) HUD will instruct the grantee to either repay the funds to the HTF Treasury account or the local account. Generally, if the HTF funds were disbursed from the grantee's HTF Treasury account, they must be repaid to the HTF Treasury account. If the HTF funds were disbursed from the grantee's HTF local account, they must be repaid to the local account.

(4) If the grantee is no longer a grantee in the HTF program when the repayment is made, the funds must be remitted to HUD and reallocated in accordance with § 93.54 of this part.

§ 93.404 Grantee responsibilities; written agreements; onsite inspections; financial oversight.

(a) *Responsibilities.* The grantee is responsible for managing the day-to-day operations of its HTF program, ensuring that HTF funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of subgrantees or contractors does not relieve the grantee of this responsibility. The performance and compliance of each contractor and subgrantee must be reviewed at least annually. The grantee must have and follow written policies, procedures, and systems, including a system for assessing risk of activities and projects and a system for monitoring entities consistent with this section, to ensure that the requirements of this part are met.

(b) *Executing a written agreement.* Before disbursing any HTF funds to any entity, the grantee must enter into a written agreement with that entity. The written agreement must ensure

compliance with the requirements of this part.

(c) *Provisions in written agreements.* The contents of the agreement may vary depending upon the role the entity is asked to assume or the type of project undertaken. This section details basic requirements by role and the minimum provisions that must be included in a written agreement.

(1) *Subgrantee.* The agreement must require the subgrantee to comply with the requirements applicable to the grantee under this part. The agreement between the grantee and the subgrantee must include:

(i) *Use of the HTF funds.* An HTF subgrantee that is a unit of general local government must have a consolidated plan under 24 CFR part 91, and the written agreement must require that an HTF allocation plan to be part of the subgrantee's consolidated plan (see 24 CFR 91.220(1)(5)). The HTF allocation plan of an HTF subgrantee that is a State agency is included in the grantee's HTF allocation plan. The grantee may impose restrictions on the use of funds by the subgrantee, *e.g.*, limit to rental projects. The written agreement must require that the selection of projects by eligible recipients will be in accordance with the HTF allocation plan. The agreement must describe the tasks to be performed, a schedule for completing the tasks (including a schedule for committing funds to projects), a budget, and the period of the agreement. These items must be in sufficient detail to provide a sound basis for the grantee to effectively monitor performance under the agreement.

(ii) *Deadlines.* The agreement must state the time requirements for the commitment and expenditure of HTF funds and specify that remaining funds will be reduced or recaptured by the grantee so that the grantee can meet its commitment and expenditure deadlines in § 93.400.

(iii) *Audit.* The agreement must state that an audit of the subgrantee must be conducted at least annually, in accordance with § 93.406.

(iv) *Program income.* The agreement must state if program income is to be

remitted to the grantee or to be retained by the subgrantee for additional HTF eligible activities.

(v) *Uniform administrative requirements.* The agreement must require the subgrantee to comply with the requirements of 2 CFR part 200, as described in § 93.405. The agreement must include the information in 2 CFR 200.331.

(vi) *Other program requirements.* The agreement must require the subgrantee to carry out each project in compliance with all Federal laws and regulations described in §§ 93.350–93.354 of this part.

(vii) *Affirmative marketing.* The agreement must specify the subgrantee's affirmative marketing responsibilities, in accordance with § 93.350.

(viii) *Requests for disbursement of funds.* The agreement must specify that the subgrantee may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the subgrantee requests grant funds from the grantee.

(ix) *Reversion of assets.* The agreement must specify that upon closeout of the subgrant agreement, the subgrantee must transfer to the grantee any HTF funds on hand and any accounts receivable attributable to the use of HTF funds.

(x) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the grantee in meeting its recordkeeping and reporting requirements.

(xi) *Enforcement of the agreement.* The agreement must specify remedies for breach of the provisions of the agreement. The agreement must specify that, in accordance with 2 CFR 200.338, suspension or termination may occur if the subgrantee materially fails to comply with any term of the agreement. The grantee may permit the agreement to be terminated in whole or in part, in accordance with 2 CFR 200.339.

(xii) *Written agreement.* The agreement must require that before the subgrantee provides HTF funds to eligible recipients, first-time homebuyers, or contractors, the subgrantee must have

a written agreement that meets the requirements of this section.

(xiii) *Duration of the agreement.* The agreement must specify the period of performance of the agreement.

(xiv) *Fees.* The agreement must prohibit the subgrantee from charging servicing, origination, or other fees for the costs of administering the HTF program, except that:

(A) The subgrantee may charge owners of rental projects reasonable annual fees for compliance monitoring during the period of affordability. The fees must be based upon the average actual cost of performing the monitoring of HTF-assisted rental projects. The basis for determining the amount of the fee amount must be documented and the fee must be included in the costs of the project as part of the project underwriting;

(B) The subgrantee may charge nominal application fees (although these fees are not an eligible HTF cost) to discourage frivolous applications. The amount of application fees must be appropriate to the type of application and may not create an undue impediment to an income-eligible family's, or other potential recipient's participation in the HTF program; and

(C) The subgrantee may charge homebuyers a fee for housing counseling.

(2) *Eligible recipient.* The agreement between the grantee and the eligible recipient selected for funding must include:

(i) *Use of the HTF funds.* The agreement must describe the use of the HTF funds for the project, including the tasks to be performed, a schedule for completing the tasks and project (including the expenditure deadline), and a project budget. These items must be in sufficient detail to provide a sound basis for the grantee to effectively monitor performance under the agreement. If the grantee is providing operating cost assistance, the written agreement must include the provisions required by § 93.201.

(ii) *Deadlines.* The agreement must state the time requirements for the commitment and expenditure of HTF funds and specify that remaining funds will be reduced or recaptured.

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(iii) *Audit.* The agreement must specify that the recipient will submit to the grantee a cost certification performed by a certified public accountant for each project assisted with HTF funds. The agreement must specify that the recipient will submit to the grantee an annual audit performed on each project assisted with HTF funds, beginning the first year following the cost certification and with the final annual audit occurring the last year of the affordability period.

(iv) *Affordability.* The agreement must specify the affordability period, require housing assisted with HTF funds to meet the affordability requirements of § 93.302 or § 93.304, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period. If the recipient is undertaking a rental project, the agreement must establish the initial rents and the procedures for rent increases, the number of HTF units, the size of the HTF units, the designation of the HTF units as fixed or floating, and the requirement to provide the address (e.g., street address and apartment number) of each HTF unit no later than the time of project completion. If the recipient is undertaking homeownership projects for sale to first-time homebuyers, in accordance with § 93.304, the agreement must establish the resale or recapture requirements that must be imposed on the housing, the sales price or the basis upon which the sales price will be determined, and the disposition of the sales proceeds.

(v) *Project requirements.* The agreement must require the housing to meet the property standards in § 93.301 of this part, as applicable, and in accordance with the type of project assisted upon project completion. The agreement must also require owners of rental housing assisted with HTF funds to maintain the housing in compliance with § 93.301 of this part for the duration of the affordability period, and to comply with the requirements of § 93.303. The agreement may permit the recipient to limit eligibility or give a preference to a particular segment of the population, only if the grantee has described any such limited eligibility or preference in its consolidated plan;

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provided, however, that any limitation or preference cannot violate non-discrimination requirements in § 93.350.

(vi) *Other program requirements.* The agreement must require the eligible recipient to carry out each project in compliance with all Federal laws and regulations described in §§ 93.350 through 93.355 of this part.

(vii) *Affirmative marketing.* The agreement must specify the recipient's affirmative marketing responsibilities, as enumerated by the grantee in accordance with § 93.350.

(viii) *Requests for disbursement of funds.* The agreement must specify that the recipient may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

(ix) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted to assist the grantee in meeting its recordkeeping and reporting requirements. The owner of rental housing must annually provide the grantee with information on rents and occupancy of HTF-assisted units to demonstrate compliance with § 93.302. If the rental housing project has floating HTF units, the owner must provide the grantee with information regarding unit substitution and filling vacancies so that the project remains in compliance with HTF rental occupancy requirements. The agreement must specify the reporting requirements (including copies of financial statements) to enable the grantee to determine the financial condition (and continued financial viability) of the rental project.

(x) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of the affordable housing requirements by the grantee and the intended beneficiaries. This means of enforcement and the affordability requirements in § 93.302 must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the grantee and beneficiaries may require specific performance. In addition, the agreement must specify

remedies for breach of the provisions of the agreement.

(xi) *Duration of the agreement.* The agreement must specify the duration of the agreement. If the housing assisted under this agreement is rental housing, the agreement must be in effect through the affordability period required by the grantee under § 93.302. If the housing assisted under this agreement is homeownership housing, the agreement must be in effect at least until completion of the project and ownership by the first-time homebuyer.

(xii) *Fees.* The agreement must prohibit project owners from charging origination fees, parking fees, laundry room access fees, and other fees; however, rental project owners may charge reasonable application fees to prospective tenants.

(3) *First-time homebuyer.* When a grantee provides assistance to a homebuyer, the written agreement must include as a minimum:

(i) *Use of the HTF funds.* The agreement must conform to the requirements in § 93.304, including the limitations on the value of the property, principal residence requirement, lease-purchase terms, if applicable, and the resale or recapture provisions. The agreement must specify the amount of HTF funds, the form of assistance (*e.g.*, grant, amortizing loan, deferred payment loan), the use of the funds (*e.g.*, downpayment, closing costs), and the time by which the housing must be acquired.

(ii) *Resale or recapture restrictions.* The agreement must specify the resale or recapture restrictions established under § 93.304 for the specified time period.

(iii) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of the affordable housing requirements by the grantee. The means of enforcement and the affordability requirements in § 93.304 for resale restrictions must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the grantee may require specific performance. In addition, the agreement must specify remedies for breach of the provisions of the agreement.

(d) *Onsite inspections*—(1) *Project completion.* The grantee must perform an onsite inspection of each HTF-assisted project at project completion to determine that the housing meets the property standards of § 93.301. The inspections must be in accordance with the inspection procedures that the grantee establishes to meet the inspection requirements of § 93.301.

(2) *Period of affordability.* (i) During the period of affordability, the grantee must perform onsite inspections of HTF-assisted rental housing buildings to determine compliance with the ongoing property standards of § 93.301 and to verify the information submitted by the owners in accordance with the requirements of § 93.302. The inspections must be in accordance with the inspection procedures that the grantee establishes to meet the inspection requirements of § 93.301.

(ii) The onsite inspections must occur 12 months after project completion and at least once every 3 years thereafter during the period of affordability.

(iii) If there are observed deficiencies for any of the inspectable items established by the grantee, in accordance with the inspection requirements of § 93.301, a follow-up onsite inspection must occur within 12 months, or within a reasonable time frame established by the grantee depending on the severity of the deficiency, to verify that all observed deficiencies have been corrected. The grantee may establish a list of non-hazardous deficiencies for which correction can be verified by third party documentation rather than reinspection. The grantee must adopt a more frequent inspection schedule for properties that have been found to have health and safety violations. Life-threatening health and safety deficiencies must be corrected immediately, in accordance with § 93.301.

(iv) The property owner must annually certify to the grantee that each building in the project is suitable for occupancy, taking into account State and local health, safety, and other applicable codes, ordinances, and requirements, and the ongoing property standards established by the grantee to meet the requirements of § 93.301.

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(v) Inspections must be based on a statistically valid sample of units appropriate for the size of the HTF-assisted project, as set forth by HUD through notice. The grantee must select the sample. For projects with one to four HTF-assisted units, the inspectable items (site, building exterior, building systems, and common areas) for each building with HTF-assisted units and 100 percent of the HTF-assisted dwelling units must be inspected.

(e) *Financial oversight.* During the period of affordability, the grantee must examine regularly (at least annually) the financial condition of HTF-assisted rental projects with 10 or more HTF-assisted units to determine the continued financial viability of the housing and must take actions to correct problems.

§ 93.405 Applicability of uniform administrative requirements, cost principles, and audits.

The requirements of 2 CFR part 200 apply to the grantees and subgrantees receiving HTF funds, except for the following provisions: §§ 200.307, 200.311, 200.328(b), 200.329, and 200.333. If there is a conflict between the definitions in 2 CFR part 200 and 24 CFR part 93, the definitions in part 93 govern.

§ 93.406 Audits.

(a) Audits of the grantee and subgrantees must be conducted in accordance with 2 CFR part 200, subpart F. The use of HTF grant funds by the grantee must be audited not less than annually to ensure compliance with this part. Any financial statement submitted by the grantee to HUD must be reviewed by an independent certified public accountant, in accordance with Statements on Standards for Accounting and Review Services, which is issued by the American Institute of Certified Public Accountants.

(b) The written agreement providing HTF assistance to the recipient must specify that the recipient will submit to the grantee a cost certification performed by a certified public accountant for each project assisted with HTF funds. The agreement must specify that the recipient will submit to the grantee an annual audit performed on each project assisted with HTF funds,

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beginning the first year following the cost certification and with the final annual audit occurring the last year of the affordability period.

§ 93.407 Recordkeeping.

(a) *General.* Each grantee must establish and maintain sufficient records to enable HUD to determine whether the grantee has met the requirements of this part. At a minimum, the following records are needed:

(1) *Program records.* (i) The forms of HTF assistance used in the program.

(ii) The subsidy layering guidelines adopted in accordance with § 93.300.

(iii) If HTF funds are used for housing for first-time homebuyers, the procedures used for establishing 95 percent of the median purchase price for the area in accordance with § 93.305, as set forth in the consolidated plan.

(iv) If HTF funds are used for acquisition of housing for homeownership, the resale guidelines established in accordance with § 93.304, as set forth in the consolidated plan.

(v) Records documenting compliance with the 24-month commitment deadline of § 93.400(d)(1).

(vi) Records documenting compliance with the 10 percent limitation on administrative and planning costs in accordance with § 93.202.

(2) *Project records.* (i) A full description of each project assisted with HTF funds, including the location (address of each unit), form of HTF assistance, and the units assisted with HTF funds.

(ii) The source and application of funds for each project, including supporting documentation, in accordance with 2 CFR 200.333 through 200.337, and records to document the eligibility and allowability of the project costs, including the documentation of the actual HTF-eligible development costs of each HTF-assisted unit (through allocation of costs, if permissible under § 93.200(c)) where HTF funds are used to assist less than all of the units in a multi-unit project.

(iii) Records demonstrating that each rental housing or homeownership project meets the maximum per-unit subsidy amount established pursuant to § 93.300(a), and the subsidy layering and underwriting evaluation in accordance with § 93.300.